



FAMILY LAWS OF IRAN

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MARRIAGE RIGHTS AND DUTIES:

The rights and duties of husband and wife are not equal: each has separate obligations and duties. In Iran Civil Code states that "husband and wife are bound to establish friendly relations," and the following article says that they must cooperate with each other for the welfare of their family and the education of their children

- As soon as marriage takes place in due form, relations of matrimony will automatically exist between the marrying parties and rights and reciprocal duties of husband and wife will be established between them.
- Husband and wife are bound to establish friendly relations and husband and wife must cooperate with each other for the welfare of their family and the education of their children.
- Male individuals are obligated to notify the marriage office within one month of getting married. If failed to comply will be fined (degree 5 penalty fines) or will face a 7 degree jail time.

According to the Article 1062, 1063, 1102, 1103, 1104 Iran Civil Code and article 49 Family Support Act.

ALIMONY (MAINTENANCE):

Alimony embraces a right to food, and the right to use lodgings and furniture and clothing "in proportion to the situation of the wife, as well as the payment of medical expenses. Specifies the wife's right to a servant if she is accustomed to this, or if she needs one because of illness or disability and court can determine the amount of maintenance and to compel the husband to pay it. Where payment is impossible, the wife may apply to the court for a judicial divorce.

The wife has a right to be maintained (Nafaqah) by her husband. This right comes into effect when the marriage is consummated, and continues so long as she is not in a state of disobedience (Nushuz). It remains in effect even if the husband is poverty-stricken and the wife has independent wealth, and it is not reciprocal at all.

Marriage is therefore based on the assumption that the man is the sole, and not merely the principal, financial provider. A woman who has earnings or inherited wealth is in theory not obliged to contribute anything to the household.

- The cost of maintenance of the wife is at the charge of the husband in permanent marriages. Cost of maintenance includes dwelling, clothing, food, furniture in proportion to the situation of the wife, on a reasonable basis, and provision of a servant if the wife is accustomed to have servants or if she needs one because of illness or defects of limbs.
- If the wife refuses to fulfill duties of a wife without legitimate excuse, she will not be entitled to the cost of maintenance. Cost of maintenance of a divorced wife during the period of "uddeh" is to be borne by the husband, unless the divorce has taken place because of disobedience of wife.
- Mother or any persons who holds the child(s) custody can take legal actions to receive child support Alimony payments.

According to the Article 1106, 1107, 1108, 1109 Iran Civil Code and article 6 Family Support Act.

If the “uddeh” arises from the cancellation of the marriage or a final divorce, the wife is not entitled to cost of maintenance, unless she is with child from her husband in which case she will be entitled to cost of maintenance till her child is born.

- The wife is not entitled to cost of maintenance if she is passing through the “uddeh” period due to the death of her husband. The wife can refer to the court if her husband refuses to provide for her maintenance. In such a case the court will fix the amount and will compel the husband to pay it. If the enforcement of the provisions of the foregoing Article is impossible, the provisions of Article 1129 must be followed.
- In the case of a temporary marriage the wife is not entitled to the cost of maintenance, unless provision has been specially made for this, or the marriage has been arranged on this condition. The wife must stay in the dwelling that the husband allots for her unless such a right is reserved to the wife.
- If the existence of the wife and husband in the same house involves the risk of bodily or financial injury or that to the dignity of the wife, she can choose a separate dwelling: and if the alleged risk is proved the court will not order her to return to the house of the husband and, so long as she is authorized not to return to the house, her cost of maintenance will be on the charge of her husband.
- In the case of the foregoing Article, so long as litigation is not concluded between the married couple, the dwelling of the wife will be fixed by mutual consent of both parties and failing such consent, the court will fix the dwelling after duly obtaining the views of near relatives, and in the absence of relatives the court itself will fix a suitable dwelling. The wife can independently do what she likes with her own property.
- The parties to the marriage can stipulate any condition to the marriage which is not incompatible with the nature of the contract of marriage, either as part of the marriage contract or in another binding contract: for example, it can be stipulated that if the husband marries another wife or absents himself during a certain period, or discontinues the payment of cost of maintenance, or attempts the life of his wife or treats her so harshly that their life together becomes unbearable, the wife has the power, which she can also transfer to a third party by power of attorney to obtain a divorce herself after establishing in the court the fact that one of the foregoing alternatives has occurred and after the issue of a final judgment to that effect.
- Maintenance of children is the duty of the father on his death or his incapacity for maintenance, this duty devolves on the paternal grandfathers, the nearer of his kin coming before the father. In the absence of a father or paternal grandfathers or in the event of their incapacity, the duty of maintenance devolves on the mother.

If the mother is dead also or is unable to maintain the child, the duty will devolve on maternal grandfathers and the grandmothers and paternal grandmother who are sufficiently wealthy to provide maintenance, giving preference to the nearer of kin over the father. If a number of the grandparents are similar in degree of kinship, the maintenance expenses must be paid by them in equal shares.

- If there are a wife and one or more relatives who are to be supported, the claim to support of the wife precedes that of others. A wife can always and in any case prefer a claim for her past expenses, and her right to these expenses is preferential. In the event of bankruptcy or insolvency of the husband her dues must be paid before any liquidation payment is arranged.
- If a male father or a male person responsible for child supports payments fails to make the child support payments will be held by the court of law and face a 6 degree jail time.

Relatives, however, entitled to provision of maintenance expenses can claim only their expenses for a future period.

According to the Article 1110, 1111, 1112, 1113, 1114,1115,1116,1118.1119,1199,1203,1206 Iran Civil Code and article 53 Family Support Act.

ON THE POSSIBILITY OF CANCELATION OF MARRIAGE:

There are some conditions that if parties can prove it they can ask for cancelation marriage for example; madness of either married couple or some disease

- Madness of either of the married couple, provided that it is settled, whether it is permanent or recurrent, will give the other person the right of cancellation. If the husband contracts a venereal disease after the performance of the marriage act, the wife have the right to refuse to have any sexual relations with him and this refusal will not debar her from the right to cost of maintenance. If a special qualification is mentioned, as a condition of the marriage, to exist in one of the marrying parties and if after the marriage it is found out that the party concerned lacks the desired qualification, the other party has the right to cancel the marriage.
- The foregoing is true whether the qualification is mentioned explicitly in the marriage contract or whether the marriage has been performed with the qualification understood mutually by the parties concerned. If the husband refuses to pay the cost of maintenance of his wife, and if it is impossible to enforce a judgment of the court and to induce him to pay the expenses, the wife can refer to the judge applying for divorce and the judge will compel the husband to divorce her.
- The same stipulation will be binding in a case where the husband is unable to provide for the maintenance of the wife. In the following circumstances, the wife can refer to the Islamic judge and request for a divorce. When it is proved to the Court that the continuation of the marriage abuses difficult and undesirable conditions, the judge can for the sake of avoiding harm and difficulty compel the husband to, divorce his wife. If this cannot be done, then the divorce will be made on the permission of the Islamic judge.

According to the Article 1121, 1127, 1128, 1129, 1130, Iran Civil Code

THE DOWRY (MARRIAGE PORTION, MAHR):

Dowry (*Mahr*) is of such importance in both marriage and divorce that it will be dealt with separately. Failure to specify a dowry does not void the contract, but entitles the bride to the "*Mahr-al-Mithal*".

- Anything which can be called property and which can be owned and possessed can be designated as a marriage portion. Immediately after the performance of the marriage ceremony the wife becomes the owner of the marriage portion and can dispose of it in any way and manner that she may like.
- If a marriage portion is not mentioned, or if the absence of marriage portion is stipulated in a permanent marriage, that marriage will be authentic and the parties to it can fix the marriage portion subsequently by mutual consent. If previous to this mutual consent matrimonial intercourse takes place between them, the wife will be entitled to the marriage portion ordinarily due.
- If no marriage portion is mentioned in the act of marriage and the husband divorces his wife before the consummation of marriage and the fixing of the marriage portion, the wife is entitled to a reasonable marriage portion, and if she is divorced after the consumption of marriage, she will be entitled to the equivalent of marriage portion.
- The Dowry's first 110 golden coins fall under the article 2 of the *Sentencing Financial Act* of Iran and the rest will have to be paid by the husband financial capability.

According to the Article 1178, 1182, 1187, 1193 Iran Civil Code and article 22 Family Support Act.

DIVORCE (TALAQ)

Talaq is divorce through the repudiation by a man of his wife, but first of all man should pay all woman rights (dowry, alimony...) and then can divorce her A man can divorce his wife whenever he wishes to do so. The divorce must be performed in the actual form of utterance and in the presence of at least two just men who must hear the actual form of divorce. If wife approve that she has spent money in during their marriage she can ask the court to obligate husband in order to pay back to the wife.

According to the Article 1133, 1134Iran Civil Code

JUDICIAL DIVORCES

Judicial dissolution is a possibility where a woman seeks a divorce but her husband refuses to release her. It involves the judge either compelling the husband to pronounce a divorce or pronouncing it himself, on the husband's behalf.

- She has proved that "the continuation of the marriage causes difficult and undesirable conditions." Although it is presumed pro forma that the husband will pronounce the divorce formula, where this cannot be achieved the divorce "will be made on the permission of the Islamic judge". Allows a wife how husband is continuously absent and whose whereabouts are unknown to apply for a judicial divorce.

A "Khul'a" divorce occurs when the wife obtains a divorce owing to dislike of her husband, against property which she cedes to the husband. The property in question may consist of the original marriage portion, or the monetary equivalent thereof, whether more or less than the marriage portion.

According to the Article 1146 Iran Civil Code

DELEGATED TALAQ

The "fiqh" allows the husband to delegate his right of "talaq" to his wife, by inserting this as a condition in the marriage contract, enabling her to divorce herself. The husband retains his own right of "talaq".

- The right is normally subject to a condition, for instance the wife may have the right to divorce her husband if he remarries or treats her harshly. The procedure in this case would be for the wife to apply to a court, demonstrating that the condition had been fulfilled, and asking the judge to pronounce the "talaq".

DIVORCE AGREEMENT

It takes place when couples dislike each other and it's mutual. A "Mubarat" divorce occurs when the dislike is mutual in which case the compensation must not be more than the marriage portion.

According to the Article 1147 Iran Civil Code

CUSTODY OF CHILDREN

The maintenance of children during the marriage is said to be a right and duty assigned to both parents, the custody of children in the case of divorce for a boy and girl under 7 years old is belong to mother (under some provision) and after that if father can prove that mother has no legal capacity he can take care of children until they become adult and after that children can chose custody between mother or father.

- The courts determined whether it would be more beneficial for the child to live with the father or the mother.
- The father was responsible for providing support unless he was deemed financially incapable of doing so in which case the mother would be held responsible. The father was responsible for managing the finances of the child. However, after the father's death, or in case of his inability to carry out his duties, the courts could appoint either the mother or the paternal grandfather as the child's guardian.
- Maintenance of children is both the right and duty of the parents. If the mother becomes insane or marriage another man during her period of custody, the custody will devolve on the father. If one of the parents dies; the custody will be the duty of the surviving although the deceased be the father and he may have appointed a guardian for the child.
- Neither of the parents can refuse to maintain the child during the time when he or she is responsible for its custody if he or she does so, the court must induce him or her, on application by the other party or the guardian or one of the relatives or the Public Prosecutor, to assume the custody. If such enforcement is impossible or ineffective the court must arrange the custody at the expense of the father, or of the mother in the event of the death of the former.
- If the physical health or moral education of the child is endangered as a result of carelessness or moral degradation of the father or mother who are in charge of its custody the court can take any decision appropriate for the custody of the child on the request of its relatives or its guardian or the Public Prosecutor.
- If the parents of the child do not live in the same house owing to divorce or any other reason, either of the parents who is not in charge of custody of the child has the right to visit the child. Determination of the time and place of visit and other particulars will be decided by the court if there is any dispute between the parents about them.
- A child cannot be taken from the parents or the father or the mother who is in charge of its custody except in cases where just fiction exists for wrong doing .The mother is not obliged to suckle the child unless the child cannot be fed except with the milk of its mother.
- In the case of a death of father of child the custody will be granted to his/her mother unless the court of law rules against it.
- Mother or any other person with the custody cannot relocate or take aboard the child(s) without the permission from father or the court of law.

According to the Article 1168, 1170, 1171, 1172, 1173, 1174, 1175, 1176, Iran Civil Code and article 43 Family Support Act.

INHERITANCE

On the causes of Inheritance and the Various Degrees of Inheritance two things give rise to inheritance: permanent marriage relationship. An instance of those who inherit by marriage is one of the spouses who survive the other one. A married pair, married permanently, and not restrained from inheriting, take inheritance one from the other.

- In all the conditions mentioned in this subsection, whichever of the married pair is the survivor takes his or her, share and this share means one half of the estate for the surviving husband and one-quarter for the surviving wife, provided that the deceased left no children or grandchildren; and it means one - quarter of the estate for the husband and one - eighth for the wife if the deceased left children or children's children. And the remainder of the estate is to be divided among the other heirs in accordance with the preceding Articles.
- The husband takes inheritance from the whole of the effects of the wife; but the wife takes only from the following effects:
 - From of the movable property of whatever kind.
 - From price of building and trees.
- The wife takes inheritance from the price of the buildings and trees and not from those things themselves; and the method of valuation is this, which the buildings and trees are valued on the supposition of their being worthy to remain in the ground, but without taking into consideration the labor.
- Spouse is entitled to all the retirement and social benefits of their partner along with their own retirement and social benefits even if they are remarried.
- Single female children without a job and children under 20 years of age unless they have disabilities or students can take advantage of their parent's social and retirement benefits.

According to the Article 913, 864,940,946,947 Iran Civil Code and article 48 Family Support Act.